THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

W.P.No.3357 of 2002

Date: 01.10.2007

Between:

The Village Tribal Development
Agency (VTDA) Billakal
Rep. By its President
N.Krishnaiah. … Petitioner

And

1. The District Collector,
   Mahaboobnagar Dist.,
   and others. … Respondents

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O R D E R:

The Village Tribal Development Agency of Billakal of Balmur Mandal, filed this writ petition questioning the alleged inaction on the part of the Collector, Mahaboobnagar District and the Superintendent of Police, Mahaboobnagar District in protecting the interests of the tribal community over the Rushula Cheruvu near Billakal.

2. The case of the petitioner is that the Rushula Cheruvu is situated within a tribal area and that non-tribals are trying to catch fish in that tank and are preventing tribals from catching fish and thereby, interfering with their fishing rights in the rushula Cheruvu. Subsequently petitioner filed W.P.MP.No.13652 of 2002 to implead the Principal Secretary, Forest Department and the Commissioner, Tribal Welfare as parties to the writ petition and added as respondents 3 and 4 in the writ petition. Thereafter, fifth respondent filed W.P.MP.No.6392 of 2002 to be brought on record as one of the respondents and that petitioner also was allowed on 21.10.2002.

3. First respondent (Collector) filed his counter-affidavit, on behalf of respondents 1 and 2, inter alia contending that Billakal village falls under the

beat of Amrabad block of Achampet Reserve Forest within the Nagarjuna Sagar Tiger Reserve Sanctuary, fishing in Rushula Cheruvu is prohibited, and so neither tribals nor non-tribals are allowed to fish in the Rushula Cheruvu, and in fact the Project Officer, ITDA, Sundipenta had accorded advance sanction of Rs.2750/- towards the cost of finger lings and Rs.400/- towards costs transportation, to the petitioner for their taking up of pisciculture, but as the Divisional Forest Officer, Wild Life, Achampet, informed him that Rushula Cheruvu falls under the Nagarjuna Sagar Tiger Reserve Sanctuary, and as such fishing in it by anybody is an offence as per the provisions of the Wild Life Protection Act, 1972, the Project Officer, ITDA, Sundipenta through his letter No.H/4008/2000 informed the writ petitioner that they do not have right to catch the fish in the Rushula Cheruvu, and violation thereof would be punishable under the Wild Life Protection Act, 1972. So instructions were issued to the Deputy Superintendent of Police, and the Revenue Divisional Officer, Nagarkurnool to see that no non-tribal should enter into Rushula Cheruvu and its vicinity for rearing ad picking of fish, as adding chemicals and putting traps around the bank and killing the wild life is an offence. Inasmuch as all the rights and privileges of the tribals are being protected, petitioner is not entitled to any relief.

4. No counter-affidavit is filed by any of respondents 3 and 4. But a counter-affidavit was filed on behalf of the 6th respondent (wrongly typed as 3rd respondent in the heading) inter alia alleging that the said society which was established in 1974 has been exercising fishing rights over Rushula Cheruvu and other tanks and that the petitioner has no right or claim over the Rushula Cheruvu. During the year 1994, when the officials of the Forest

Department objected to its members harvesting the fish in Rushula Cheruvu, on the ground that it is situated in forest area, on a representation made by the 6th respondent, Forest Deartment recommended to the Government to continue Rushula Cheruvu with the 6th respondent and therefore it is exercising fishing right therein without affecting the lives of wild animals. After it dropped fish seed purchased from private agency in the Rushula Cheruvu, petitioner after obtaining orders of status quo is preventing it from harvesting the fish in Rushula Cheruvu,. Inasmuch as 6th respondent has fishing rights over the said Cheruvu petitioner is not entitled to any relief.

5. It is well known that right of fishing can be acquired by a grant or easement, and so it would amount to a right in immovable property. So in view of Regulation 3 of A.P.(Schedule Areas) Land Transfer Regulation, 1959 transfer of any right in immovable property in a tribal area to a non-tribal, is void and so question of any non-tribals fishing in Rushula Cheruvu, does not arise.

6. In para 7 of the counter-affidavit of the first respondent he stated the Divisional Forest Officer, Wild Life Manager, Achampet, Dy.Superintendent of Police and Revenue Divisional Officer, Nagar Kurnool were addressed to see that no non-tribal enters into Rushula Cheruvu and its vicinity for rearing and picking fish or adding chemical therein or for putting up traps and killing wild life. So it cannot be said that first respondent is not taking any action in preventing non-tribals enters into or fishing in Rushula Cheruvu.

7. In para 5 of this counter-affidavit fifth respondent stated that inasmuch as fishing in Rushula Cheruvu is prohibited as it is in the Wild Life

Sanctuary he sought a clarification from the Government and the request made by the petitioner to fish therein. As Rushula Cheruvu is in Wild Life Sanctuary petitioner can have no right to fish in the Rushula Cheruvu. From the averments in the affidavit filed in support of the grievance of the petitioner seems to be permitting third persons to fish in Rushula Cheruvu. Since the counter-affidavit of the first respondent shows that nobody is allowed to fish in the Rushula Cheruvu, it is clear that respondents 1 and 2 are taking all the steps necessary to protect the area in the Wild Life Sanctuary.

8. Till the Government issues a clarification on the letter addressed by the first respondent relating to permitting Tribals to fish in Rushula Cheruvu, which is situated in a Wild Life Sanctuary, the right of petitioner to fish in that tank is doubtful. So no relief can be granted to the petitioner in this petition.

9. Hence, the writ petition is dismissed. No costs.

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C.Y.SOMAYAJULU, J.

1st October, 2007.

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